

Appl. No. 10/136,001
Amdt. Dated 12-Sep-05
Reply to Office Action of 05/20/2005
Attorney Docket No. : 6045-006

Remarks/Arguments

In the Communication mailed September 9, 2005, the Examiner noted that the Response filed June 20, 2005 was not fully responsive to the prior Office Action and restriction requirement because Claims 11 and 19 read on a non-elected species of Figs. 3 and 4 and were not cancelled in response to the election of the species of Figs. 1 and 2.

In response, Applicant has cancelled Claims 11 and 19 which are directed to the species of Figs. 3 and 4. Applicant's cancellation of Claims 11 and 19 is based upon the provisional election with traverse noted in Applicant's Amendment and Response filed June 20, 2005, which is hereby restated and incorporated by reference.

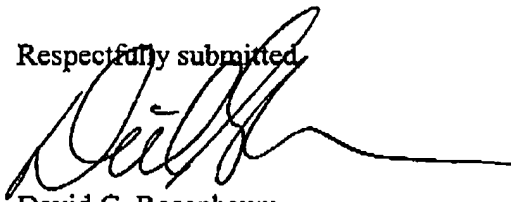
In particular, with respect to the species restriction requirement, Applicant traverses on the basis that the Examiner has not satisfied the burden imposed under MPEP §803 of making a *prima facie* showing that searching the identified species together imposes a serious burden on the Examiner. For the Examiner to make a *prima facie* showing, the Examiner must demonstrate by either an appropriate explanation of separate classification or separate status in the art, or a different field of search as defined in MPEP § 808.02. Only after such a *prima facie* showing made, is Applicant required to rebut by making appropriate showings or proffering appropriate evidence. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. Applicant respectfully submits that the Examiner's Restriction Requirement is improvidently issued and fails to comport with the requisite *prima facie* showing required by MPEP §803. The Examiner has failed to establish that searching the purported species and sub-species imposes a serious burden upon the Examiner. The Examiner has not alleged or argued that the purported species have attached separate classification, separate status in the art or are in a different field of search. Accordingly, the requirement for Applicant to elect between species is submitted to be improvidently made.

This Amendment is being concurrently filed with an Amendment Transmittal Letter including a fee calculation sheet, any applicable Request for Extension, and fee calculations. The Director is authorized to deduct any additional expenses from Deposit Account No. 18-2000, of which the undersigned is an authorized signatory.

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Should the Examiner find that there are any outstanding matters which are susceptible of resolution by telephone interview, the Examiner is invited to telephone the undersigned to discuss the same.

Respectfully submitted,



David G. Rosenbaum
Reg. No. 31,872

ROSENBAUM & ASSOCIATES, P.C.
650 Dundee Road, Suite 380
Northbrook, IL 60062
Tel. 847-770-6000
Fax. 847-770-6010
E-mail: drosenbaum@biopatentlaw.com